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## Lead NEPA Story: Uncertain path for NEPA overhaul as comment period ends

(Greenwire, 8/20/2018) Nick Sobczyk, E&E Reporter

The first public comment period ends today for one of the Trump administration's broadest regulatory overhauls, but the path forward is far from clear.

The White House Council on Environmental Quality in June issued a proposal aimed at streamlining its National Environmental Policy Act regulations, which underpin environmental permitting for the entire federal government.

The advance notice of proposed rulemaking has drawn more than 10,500 comments ahead of the deadline at midnight tonight. That includes hundreds of form letters, as well as more detailed missives from environmental

organizations and conservative heavyweights such as Americans for Prosperity.

And yet CEQ has not made clear exactly what it wants to change in the regulations, even if environmental and industry groups have an idea of where the process is headed. That has caused consternation among greens, who see it as part of a larger effort by the Trump administration to tear down environmental permitting.

"I think that one thing that has to be laid out as the process continues is the ground rules for the game," said Raul Garcia, legislative counsel at Earthjustice.

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## Clean Air Act: EPA tucks major permitting change into climate proposal

(Greenwire, 8/21/2018) Sean Reilly, E&E Reporter

The Trump administration's proposed replacement for the Obama-era Clean Power Plan would greenlight a landmark change to EPA's New Source Review permitting program while allowing more emissions of pollutants linked to premature deaths, according to the plan's supporting documents released today.

The proposed Affordable Clean Energy Rule would give states the option of letting power companies adopt a new yardstick for deciding whether a power plant upgrade or expansion requires a pre-construction permit under the Clean Air Act's New Source Review program.

Currently, companies must forecast the potential impact on overall annual air emissions. The draft

rule would substitute an approach tied to whether the project would lead to a higher hourly emissions rate.

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If the distinction seems arcane, both backers and foes of the proposed change view the potential consequences as far-reaching.

The status quo may discourage utilities "from investing in beneficial efficiency improvements," EPA said in a summary today of the proposed change. That's because such improvements let a power plant produce electricity more effectively — leading to heavier use and higher annual emissions that could trigger the need for a New Source Review permit, the summary indicated.

But to environmental and public health groups, who say that New Source Review is crucial to ensuring that upgraded plants have up-to-date pollution controls, the upshot would be dirtier air.

"What this is really about is more air pollution from dirty coal plants and more people downwind suffering from those plants," Paul Billings, senior vice president for advocacy at the American Lung Association, said in an interview.

A spokesman for the Edison Electric Institute, which is still reviewing the draft rule, had no specific comment this morning on the proposed change to the New Source Review program. At the National Rural Electric Cooperative Association, spokesman Dan Riedinger said in an email that the planned change makes sense because the hourly emissions rate test is already used in defining potential pollution increases in another Clean Air Act program known as New Source Performance Standards.

Utilities, however, aren't the only industrial sector seeking the change. In July, the House Energy and Commerce Subcommittee on Environment approved legislation by Rep. Morgan Griffith (R-Va.) that would incorporate the use of an hourly emissions test throughout the New Source Review program.

In a statement this morning, Griffith called EPA's proposal a positive step but added that NSR "currently applies to a myriad of manufacturing and industrial facilities as well as electric power generation."

Those facilities "also need the clarity in the regulatory process that my reforms would provide," Griffith said. His legislation is awaiting action by the full Energy and Commerce Committee.

Should the proposed NSR change make it into the final rule, Keri Powell, a former EPA attorney now in private practice, agreed it could be extended to other types of polluting businesses.

"There is precedent for things to start with the power industry and then move on to others," she said in an interview.

As EPA acknowledged in its regulatory impact analysis, the broader changes in the proposed rule could lead to more emissions that contribute to formation of fine particulates and ozone, variously tied to an array of heart and lung problems.

By EPA's projections, the result could be up to 1,400 more premature deaths each year by 2030, Billings said in a Twitter post.

Asked about that potential outcome during a conference call with reporters this morning, EPA air chief Bill Wehrum said the agency also has "very aggressive" programs that directly target pollutants stemming from coal-fired power plants.

"Our view is, if we want to regulate PM [particulate matter], we regulate PM straight up," Wehrum said.

This year, however, EPA has overhauled its framework for reviewing air quality standards for particulate matter, ozone and four other pollutants to incorporate consideration of the possible economic consequences.

EPA is also pursuing a separate proposal that would limit its use of science in developing new regulations to studies for which the underlying data "are publicly available in a manner sufficient for independent validation," according to the text.

If implemented, critics say, that change could block the agency from relying on major studies by Harvard University and the American Cancer

Society researchers that in 1997 led to the first-ever standards for fine particulates.

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## NEPA: Navy defends asking Congress for leeway to kill marine mammals

(*Greenwire*, 8/22/2018) Courtney Columbus, E&E News reporter

A marine mammal provision in the latest National Defense Authorization Act, which President Trump signed into law earlier this month, has drawn criticism from some conservation groups but the administration insists it's sound policy.

The change enables the Navy permits to unintentionally harm or kill a certain number of marine mammals during its military readiness activities to last seven years instead of five. Extending the permits means less frequent environmental reviews are required.

Groups including the Sierra Club and Oceana have slammed the provision for undermining the Marine Mammal Protection Act. But NOAA says it won't cause harm because the agency will still apply the same stringency to evaluating such "take" permits.

"We do not believe the provision will affect marine wildlife, including whales. The agency would be required to conduct the same analyses and make the same determinations prior to issuing any incidental take regulations as it does now," Jolie Harrison, chief of the permits and conservation division at NOAA Fisheries' Office of Protected Resources, said in a statement.

The Navy also says it doesn't foresee the provision causing harm. "The Navy does not expect that this change will have a negative impact to the level of protection afforded marine mammals under the MMPA," Navy spokeswoman Lt. Christina Sears said in an email, adding that the Navy and NOAA meet annually to discuss current permits and they can be changed at any point.

It currently takes the Navy about four years to complete the process, she said. The extension

outlined in the NDAA will "provide workload and manpower efficiencies," she said. And it might also lead to long-term cost savings.

The Department of Defense asked for the change, submitting a legislative proposal that led to the provision in the NDAA. The Navy and NOAA had spent several years working on ways to streamline this permitting process, Sears said.

The Navy's use of underwater sonar and explosives can harm marine mammals, explained Lara Levison, senior federal policy director at environmental group Oceana. More time between reviews could lead to less precise information about the Navy's planned activities and how they might affect the animals, she said.

"And then, of course, ocean conditions are changing quite significantly and unpredictably due to climate change and temperature changes and pH changes in the ocean, so that's a wild card that really calls out for more frequent analysis rather than less frequent analysis," Levison said.

Also, because it's difficult to study marine mammals in the wild, scientists don't always notice immediately when a population starts to decline, Levison said. The endangered North Atlantic population of right whales started declining in 2010, but scientists didn't confirm the change until 2017, even though these whales are relatively well-studied compared with other species, she added.

Last month, before the NDAA conference report was released, more than 100 House Democrats signed a letter calling for the removal of the marine mammal language and a controversial sage grouse provision. The grouse language, which would have prevented the grouse and the

lesser prairie chicken from being listed under the Endangered Species Act for 10 years, didn't make it into the final version.

The Navy recently estimated that during a five-year cycle, its activities would kill more than 250 whales and other marine mammals, inflict permanent harm on 3,000, and cause more than 30 million disruptions to foraging and other vital behavior, according to the Democrats' letter. The data is from a Natural Resources Defense Council analysis based on the Navy's most recent completed round of environmental reviews.

But Rear Adm. Kevin Slates, then chief of the Naval Operations Energy and Environmental Readiness Division, wrote in a 2013 blog post that the service's environmental impact statements assume a worst-case scenario and overestimate how much its activities will harm marine mammals.

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"The reality is the impact of Navy training and testing activity on marine mammals is likely to be significantly less than what our permit requests capture," he wrote.

Those estimates also don't include the impact of steps the Navy takes to mitigate harm, he added.

Retired Vice Adm. Dennis McGinn, who served as assistant secretary of the Navy for energy, installations and environment from 2013 until 2017, supports the marine mammal rider and calls the current five-year timeline "very, very inefficient."

McGinn said Navy personnel aim to "be conservative in our numbers and overestimate the potential number of takes, because we don't want to get anybody into trouble for exceeding what realistically is a more valid take number. So it tends to be, I would call it, take inflation."

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## **NEPA: Trump admin OKs sprawling Alaska gold project**

(*Greenwire*, 8/14/2018) Dylan Brown, E&E reporter

The Trump administration approved a massive gold mine for southwestern Alaska yesterday that would rank among the world's largest mining projects.

The Army Corps of Engineers and Bureau of Land Management's joint record of decision for the Donlin Gold project leaves the Canadian co-owners — Barrick Gold Corp. and NovaGold Resources Inc. — needing only state permits, which they expect to receive early next year.

Located in the remote Kuskokwim Mountains, the Donlin project comprises a 2.2-square-mile open pit, nearly 5,000 acres for tailings and waste-rock disposal, and a 316-mile pipeline to supply natural gas.

During an estimated 27-year life span, the mine is expected to process about 59,000 tons of ore a day, yielding 30 million ounces of gold.

The Army Corps' permits allow for impacts to about 3,500 acres of wetlands and 226,000 linear feet of streams. The Army Corps yesterday promised compensatory mitigation as required

under federal law, but the agency's Alaska District has routinely failed to force mining companies to restore or preserve the same amount of wetlands and streams damaged by their operations.

At a signing ceremony in Anchorage, Army Corps chief R.D. James hailed the Donlin decision as the first to fulfill President Trump's "One Federal Decision" process established by last year's Executive Order 13807.

"Timely processing of environmental reviews and authorization decisions for proposed major infrastructure are being achieved as a result of cooperative relationships between federal agencies," Interior Assistant Secretary Joe Balash said at the ceremony.

### **'Devastating to our subsistence region'**

Critics of the project have been urging Alaska Gov. Bill Walker (I) to give more time for Alaska Native communities downstream from the mine site to voice their concerns.

"The social and environmental impacts could be devastating to our subsistence region and traditional Yup'ik way of life where we have less opportunity for cash income but lots of subsistence foods from the land to keep our communities and families healthy," said Mary Matthias, natural resource director for the Orutsararmiut Native Council.

Citing a recent Orutsararmiut survey, Matthias said Donlin's quick advancement will shock residents who are busy berry-picking, fishing and hunting in preparation for winter.

"Alaska, BLM and [the Army Corps] should ensure meaningful consultation and cooperation before deciding to make a life-changing decision for a whole region of estimated 27,000 people," Yukon-Kuskokwim River Alliance co-founder Alissa Nadine Rogers said.

Nearly a dozen regional tribal corporation councils have passed anti-Donlin resolutions, but the two tribes that own the mineral and

surface rights at the mine site — the Calista and Kuskokwim — have partnered with Donlin and applauded the decision.

"Together, we have gone above and beyond the minimum state and federal requirements to ensure this project protects our lands while economically benefiting our shareholders and region for generations to come," Kuskokwim President Maver Carey said.

Interior Secretary Ryan Zinke praised the stipulation in the mine plan that requires Donlin to give preference to Alaska Natives in the hiring process for nearly 1,400 mining jobs.

Donlin also plans to hire 3,000 more workers during the four-year construction process.

"It will create good-paying jobs to a region of Alaska with historically high unemployment," Zinke said, "and we look forward to realizing the many opportunities that the mine will bring to the state of Alaska and the American people."



This region of southwestern Alaska is known as the Kuskokwim Gold Belt. The proposed Donlin Gold mine would be positioned in a remote area 145 miles northeast of Bethel. The company would ship cargo to the mine site via barge on the Kuskokwim River and is planning a 157-megawatt natural gas plant to power the site. Claudine Hellmuth/E&E News; Data: ©2018 Google/SnazzyMaps

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## NEPA: Interest in management overhaul tests ban on 'bulk comments'

(Greenwire, 8/16/2018) Scott Streater, E&E reporter

The Bureau of Land Management says it received at least 223,000 comments during a 90-day public comment period that ended this month on a proposal to make potentially significant changes to Obama-era greater sage grouse conservation plans.

But BLM spokesman Derrick Henry said that, while the agency is still receiving some mailed comments postmarked before the Aug. 2 deadline, it appears that the vast majority of the comments counted so far were "form letters" that simply repeated the same comments or recommendations.

In an email to *E&E News*, Henry said the agency has counted "about 490 unique letters" commenting on the merits of proposed grouse management revisions outlined in six draft environmental impact statements (EISs) and proposed resource management plans BLM released last spring.

The proposed changes analyzed in the draft EISs, depending on how they're eventually implemented, would remove some restrictions on oil and gas development, mining and other activities in the original grouse protection plans finalized in 2015 that encompass millions of acres of federal land in Colorado, Idaho, Nevada/Northern California, Oregon, Utah and Wyoming.

"Included in the 223,000 number are many duplicates where the same letter was submitted across different states," Henry said.

He added, "We should keep in mind, however, that comment analysis is more than a vote-tallying exercise. Comments will be weighed not as much on their number as on their substantive quality."

The form letters fall into a category of "bulk comments" that the Interior Department has recently complained about.

Interior Secretary Ryan Zinke said last week the department wouldn't accept such bulk comments "in any format (hard copy or electronic)

submitted on behalf of others" during a 30-day public comment period on the proposed establishment of two national monuments in Kentucky.

That ban on bulk comments also extends to public correspondence on converting the former Mississippi home of slain civil rights leader Medgar Evers into a national monument.

How BLM and Interior weigh the sheer volume of comments on the proposed grouse management changes has sparked differing views, from those who support and oppose the planned revisions.

Nada Culver, senior counsel and director of the Wilderness Society's BLM Action Center in Denver, said a letter, even a form letter signed individually each time, "that tells the BLM to protect the greater sage grouse is substantive and important and should be weighed as such."

Culver added: "It is disheartening to see the agency already discounting the efforts of average Americans to make their voices heard. People take the time to submit comments on how they want the BLM to manage the public lands that the agency stewards on their behalf. The agency has an obligation to listen."

But Ethan Lane, executive director of the Public Lands Council and of federal lands for the National Cattlemen's Beef Association, said BLM is correct to handle form letters from national conservation groups differently than it does local stakeholders.

"These comment periods are not a vote, no matter how badly activists groups would like them to be," Lane said in an emailed statement.

"Public comment is critical, but substantive comments from impacted stakeholders must be respected," he added. "Local land managers have an intimate understanding of the unique conservation challenges in their area and we hope the BLM incorporates site-specific feedback into its decision-making."

Henry said that the public comments are important and that BLM will use them "to refine the proposed management actions and environmental analysis impacts in the EISs" before a final EIS is published this fall.

"We appreciate the submissions from our partners and interested individuals and their ongoing involvement in efforts to conserve

greater sage grouse and sagebrush habitats," Henry said. "This involvement is the basis for ongoing trust in pursuing shared goals and for the BLM to reach the best decisions about on-the-ground management responsibilities as a good neighbor in western communities."

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## *Lead NEPA Story (continued from page 1)*

Those ground rules should include exactly how much CEQ will engage with the public and which aspects of the regulations are open to change, Garcia said.

There are sections of the regulations backed up by statute and large bodies of case law. What's more, some of the regulatory streamlining efforts taken on by other agencies — including the 150-page limit for environmental impact statements at the Interior Department — are already on the books in CEQ's existing regulations.

The early proposal from CEQ lays out a list of 20 broad questions about the regulations, including whether some of the most litigated terms in the regulations — "major federal action," "cumulative impact" and "significantly," among others — should be redefined.

In a public comment endorsed by nearly 350 environmental organizations, greens say CEQ's regulations have withstood "the test of time."

"Rather than contemplating a rewrite of the regulations, we urge that CEQ invest its modest resources, and most importantly, its leadership position, in a systematic initiative to enforce them," the comment says.

Industry and conservative groups, meanwhile, have generally praised the effort, arguing that vague statutes and conflicting interpretations in CEQ's NEPA guidance and regulations can cause permitting delays.

"This constant revision and reinterpretation has added to, rather than alleviated, the complexity of compliance," Americans for Prosperity Chief

Government Affairs Officer Brent Gardner wrote in a public comment. "Today, the NEPA review process continues to [be] a significant roadblock for federally funded construction and infrastructure investments."

Still, the advance notice of proposed rulemaking leaves plenty of room for interpretation, and acting CEQ Director Mary Neumayr at her confirmation hearing for the permanent job last month declined several times to outline CEQ's future plans in detail.

She instead echoed a generalized talking point used by industry and some other agency officials: The regulations have not been significantly updated in decades, and with permitting times on the rise, they may be ripe for change.

Neumayr also suggested the agency has not decided whether it will rewrite its NEPA regulations, though she did not specifically commit to fulfilling a request from Sen. Ed Markey (D-Mass.) to have public hearings on the proposal in each EPA region.

"It is not a regulatory proposal," she said. "We have not made the decision to move forward with a proposed rule, but should we make that decision, I will commit that we will consider all of our options with respect to public engagement."

CEQ spokesman Dan Schneider said today that the agency "will review the comments we have received before we determine next steps and any potential revisions."

Apparent issues with the regulations.gov website have made it difficult to gauge just how much public interest the NEPA proposal has garnered.

One count on the website shows 10,586 comments, while another indicates more than 11,000. One environmentalist said some of his comments were not registering over a span of several days last week, though they now appear to have loaded onto the docket.

That appears to be a technical difficulty rather than cause for concern for environmentalists, but Garcia said they'll be pushing for public meetings and a slower rulemaking process that allows for more engagement.

"The process itself is just beginning," he said, "but so far, it doesn't look very good."

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